

REMARKS

Claim 1, 2 and 4-54 are currently pending in the Application. New claims 55-58 are added herein. Claims 12, 14 and 24-44 have been previously withdrawn from consideration.

Claims 1, 2, 4-11, 15-23, 45-54 were rejected, and claim 13 was objected to in the office action dated December 31, 2003. A response to the claim rejects/objections was submitted by Applicant on June 7, 2004.

In the present Office Action, the Examiner requires an election between the following groups of claims:

- (1) Claims 1-2, 4-11, 13, 15-23, and 45-46, which the Examiner asserts are drawn to an armor or an article containing an energy absorbing layer of nickel-titanium alloy; a second plate of alpha-beta titanium alloy, and a third plate of alpha-beta titanium alloy; and
- (2) Claims 47-54, which the Examiner asserts are drawn to a method of absorbing energy from a projectile and/or a method of protecting an article of manufacturing against penetration from an impacting projectile.

According to the Examiner, the claims of Group (1) are distinct from the claims of Group (2) because the product armor or article could be used in an environment that does not contain an impacting projectile.

ELECTION

As a preliminary matter, Applicant respectfully disagrees with the Examiner's characterization of the claims of Group (1). Although Applicant, in response to the Office Action issues on July 15, 2003, *for purposes of examination* made an election of species wherein layer 24 is a nickel-titanium alloy, second plate 30 is an alpha-beta titanium alloy, and third plate 40 is an alpha-beta titanium alloy, Applicant asserts that independent claims 1 and 45 are generic claims that read on the elected species, but are not limited thereto.

Further, other claims in Group (1), while properly related to the elected species for election purposes, are not necessary limited thereto unless expressly set forth in the claim.

While Applicant does not concede that the Examiner's characterization of claims is proper, the Applicant hereby elects the claims of Group (1) (claims 1-2, 4-11, 13, 15-23, and 45-46) without traverse. The claims of Group (2) (claims 47-54) are withdrawn.

NEW CLAIMS

Claims 55-58 are added herein. Applicant asserts that the new claims do not add new matter and are properly related to the claims of Group (1) and the elected species. Therefore, Applicant requests that the Examiner enter and examine new claims 55-58 along with the claims of Group (1).

New claims 55 and 56 generally relate to armor plates and armors comprising at least one layer of a metallic material selected from at least one of a metallic material that undergoes a reversible phase change upon absorbing energy and a metallic material that exhibits an elastic strain deformation of at least 5%. New claims 57 and 58 generally relate to armored vehicles including armor plates and armors comprising at least one layer of a metallic material selected from at least one of a metallic material that undergoes a reversible phase change upon absorbing energy and a metallic material that exhibits an elastic strain deformation of at least 5%.

At least for the reason set forth at page 4 (in connection with claim 10) and page 7 of Applicant's response dated June 7, 2004 (to which a response has not yet been issued by the Examiner), Applicant asserts that new claims 55-58 are patentable over the reference of record and requests that the Examiner consider and allow these claims.

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CONCLUSION

Applicant has elected the claims of Group (1) (claims 1-2, 4-11, 13, 15-23, and 45-46) for further prosecution in the Application. Claims 47-54 are withdrawn. New claims 55-58 are added herein. Applicant asserts that claims 1-2, 4-11, 13, 15-23, 45-46, and 55-58 are in a condition for allowance and asks the Examiner allow these claims.

Additionally, as indicated in the Office Action issued on July 15, 2003, upon allowance of a generic claim, the Applicant is entitled to consideration of claims to additional, non-elected species that are written in dependent form or otherwise include all the limitations of an allowed generic claim. Applicant submits that claim 1 is a generic claim that is in a condition for allowance by the Examiner. Accordingly, since each of the non-elected species are embraced by an allowable generic claim, Applicant requests that the Examiner withdraw his restriction requirement as to the encompassed species and consider the claims drawn to the non-elected species.

Should the Examiner have any questions regarding the foregoing, the Examiner is requested to contact the undersigned.

Respectfully Submitted,

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